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MS APPEAL BRIEF - PATENTS  
1517-1032



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Robert C. HOCHTRITT et al.

Conf. 7581

Application No. 10/660,659

Group 3653

Filed September 12, 2003

Examiner Rashmi Sharma

DISPENSER FOR FOLDED ABSORBENT  
SHEET PRODUCTS

APPEAL BRIEF

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(i) Real Party in Interest

The real party in interest in this appeal is the assignee, SCA Tissue North America LLC, of Neenah, Wisconsin.

(ii) Related Appeals and Interferences

None.

(iii) Status of Claims

Claims 1-16 are pending and this appeal is taken from the rejection of all of the pending claims.

(iv) Status of Amendments

No amendment was filed subsequent to the final rejection on appeal.

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(v)

Summary of the Claimed Subject Matter

The claimed invention is a dispenser for absorbent sheet products (preferably paper napkins). The dispenser as recited in claim 1, the only independent claim on appeal, is characterized by a body and a stand, with the body being shaped in two sections that are angled relative to one another, and when mounted on the stand, are each angled obliquely relative to the horizontal (page 3, line 16 to page 4, line 2). The upstream body section is more nearly vertical, whereas the downstream body section is more nearly horizontal (page 7, line 24 to page 8, line 3).

It has been found that a dispenser having the above structure permits holding and dispensing a relatively large volume of sheet products while occupying a relatively small area of counter space. Furthermore, such a structure is considerably more stable than the vertically-oriented countertop dispensers of the prior art (see discussion of prior art at pp. 1-3 of the specification).



(vi) Grounds of Rejection to be Reviewed on Appeal

There are two issues on appeal, namely:

1) Whether claims 8, 10 and 11 are indefinite,  
and

2) Whether claims 1-6, 8-11 and 13 would have been obvious, within the meaning of 35 USC §103(a), based on the combined disclosures of Petterson (U.S. Patent No. 5,100,020) in view of Swift (U.S. Patent No. 1,151,064).<sup>1</sup>

(vii) Argument

The indefiniteness rejection

The final rejection questions how the angular range of 45-85 degrees in claim 8 could be characterized as being "more nearly vertical" as recited in claim 1, given that its lowermost value is equally horizontal and vertical; and, similarly, how the angular range of 15-60 degrees of claims 10 and 11 could be characterized as "more nearly horizontal" as recited in claim 1, when the 45-60 degree portion of that range is oriented more vertically than horizontally.

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<sup>1</sup>The remaining dependent claims 7, 12 and 14-16 were rejected as allegedly being obvious based on this combination of references further in view of various additional secondary references. As appellant does not argue those claims separately herein, the rejection of those claims should stand or fall with the prior art rejection based on the two principal references.

The answer is simply and clearly that the "more nearly vertical" and "more nearly horizontal" phrases in claim 1 are describing the recited first and second sections of the dispenser body relative to one another. That is, the first section of the dispenser body forms an angle that is more nearly vertical than the second section, and, correspondingly, the second section forms an angle that is more nearly horizontal than the first section.

It is believed that the language of the independent claim 1 is sufficiently clear on this point, such that dependent claims 8, 10, and 11 are likewise suitably definite. That is, the relative nature of the recited angular orientation of the two sections in claim 1 is sufficiently clearly implied in that claim.

It is also clear from the specification that this is how claim 1 is to be read. See the discussion in the last full paragraph on page 7 of the specification in reference to Fig. 2, and see especially the paragraph bridging pages 7 and 8 of the specification.

The paragraph bridging pages 6 and 7 of the final rejection suggests that the above point might have eluded the Examiner, especially in view of the comment found there that "the orientation of the angle between the first and second sections is not being claimed" - an

observation that, although accurate, does not seem to bear on the question presented. That is, the oblique angles of claim 1 are the respective angles of each section relative to the horizontal, and the claim characterizes those angles relative to one another; however, the claim does not recite any particular angle between the sections, much less any orientation of such an angle.

Notwithstanding this apparent confusion on the part of the Examiner, it is believed to be apparent from the above discussion that the language of the claims on appeal would be readily and correctly understood by a person of ordinary skill in the art to which this invention pertains.

The prior art rejection

The final rejection contends that it would have been obvious to replace the continuously curved dispenser body of Petterson with one having two straight sections that are angled relative to one another, as in Swift.

Petterson describes a body which is continuously curved about a radius of curvature  $R$ , which is designed in relation to the natural radius of curvature  $R$  that a stack of the Petterson napkins will assume. See, for example, column 3, lines 53-57, and Figs. 2 and 4 of Petterson.

Thus, the Petterson dispenser is designed to accommodate a particular type of napkin stack, namely, one

in which the non-uniform thickness of the napkins causes the stack to have a natural repose that extends in an arcuate shape.

To replace the arcuate dispenser body of Petterson with an angled one as in Swift, therefore, would be contrary to the teaching of the primary reference.

For its part, Swift describes a paper cup dispenser, in which the angled configuration is provided for reasons specific to dispensing a stack of paper cups. In particular, the vertical section of the Swift dispenser is deliberately dimensioned so as to be shallower than the diameter of the paper cups, such that the paper cups in the vertical section are oriented at an angle similar to that of the lower angled section of the Swift dispenser. The discussion at page 2, lines 49-68 of Swift reveals the rationale for this arrangement, which rationale has no apparent applicability to the arcuate napkin stack of Petterson.

Thus, were the hypothetical skilled artisan to have considered Petterson and Swift together, it is believed to be apparent that there would have been no motivation to modify Petterson in view of Swift in the manner proposed in the Official Action, in view of the disparate and incompatible purposes for which the respective structures of the references are provided.

The final rejection contends that the motivation to make the proposed combination would have been "to provide a more user friendly way for one to reach the opening of the dispenser." However, that rationale is untenable, given that it is clear from comparing Fig. 2 of Petterson to Fig. 2 of Swift that the opening 36 of Petterson is already no less accessible than the opening 9 of Swift.

The final rejection purports to address this lack of motivation to combine, in the first full paragraph on page 7 of the final rejection. However, after acknowledging case law on the necessity of a proper motivation to combine, the final rejection merely asserts that "Swift's angled dispenser body does in fact teach Applicant's invention."

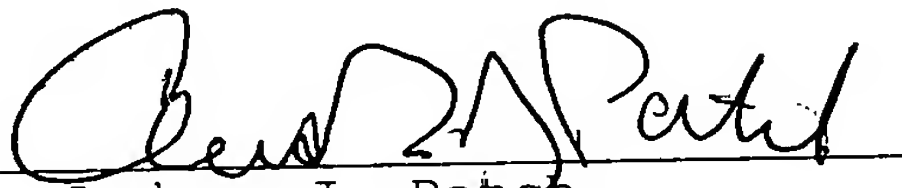
That statement not only is a *non sequiter*, but also is inconsistent with the rejection on appeal, which concedes that Swift does not teach appellant's invention - hence the reliance on plural references in combination, rather than an anticipation rejection based on Swift alone.

Conclusion

From the foregoing discussion, it is believed to be apparent that the rejections of claims 1-16 are improper and should be reversed. Such action is accordingly respectfully requested.

Respectfully submitted,

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(viii) Claims Appendix

1. A dispenser for holding and dispensing folded absorbent sheet products, the dispenser comprising a body and a stand, the stand comprising a base for supporting the dispenser on a horizontal surface, the body comprising two sections, wherein a first upstream one of said sections is straight and extends over the majority of the length of said body, and wherein a second downstream one of said sections extends at an angle relative to said first section and communicates with a dispensing opening, and wherein, when said dispenser is supported by said stand on said horizontal surface, each of said first and second sections forms an oblique angle relative to said horizontal surface, said first section forming an angle that is more nearly vertical, and said second section forming an angle that is more nearly horizontal.

2. The dispenser according to claim 1, wherein said stand is detachable from said body.

3. The dispenser according to claim 2, wherein said body comprises mounting structures for mounting said body on a vertical surface, such that said first straight section extends parallel to said vertical surface.

4. The dispenser according to claim 1, further comprising a stack of folded absorbent sheet products held within said body.
5. The dispenser according to claim 1, wherein said stand comprises attachment structures for fixing the dispenser to said horizontal surface.
6. The dispenser according to claim 1, wherein said stand comprises feet made of a resilient material for supporting the dispenser on said horizontal surface.
7. The dispenser according to claim 4, wherein said stack of folded absorbent sheet products are interfolded paper napkins.
8. The dispenser according to claim 1, wherein said angle formed by said first section is in the range of 45-85°.
9. The dispenser according to claim 8, wherein said angle formed by said first section is about 60°.

10. The dispenser according to claim 1, wherein said angle formed by said second section is in the range of 15-60°.

11. The dispenser according to claim 10, wherein said angle formed by said second section is about 45°.

12. The dispenser according to claim 3, wherein said mounting structures for mounting said body on a vertical surface comprise at least two openings formed in a rear wall of said body, for receiving bolts securing said body to said vertical surface.

13. The dispenser according to claim 1, wherein said body comprises a main portion and a cover, and wherein the cover is openable in relation to the main portion to expose an interior of said main portion over all of said first straight section.

14. The dispenser according to claim 13, wherein said main portion comprises peripheral flanges extending outwardly along at least part of said first section, and wherein edge regions of said cover, when closed, rest upon said flanges.

15. The dispenser according to claim 13, wherein said cover is transparent.

16. The dispenser according to claim 15, wherein said main portion is opaque.

(ix) Evidence Appendix

None.

(x) Related Proceedings Appendix

None.